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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|-------------------------|---|-----------------------|
| In re Applications of |) | MM Docket No. 93-87 |
| |) | |
| RAYMOND W. CLANTON |) | File No. BPH-911216MC |
| |) | |
| LOREN F. SELZNICK |) | File No. BPH-911216MD |
| |) | |
| For Construction Permit |) | |
| for a new FM Station on |) | |
| Channel 279A in El Rio, |) | |
| California |) | |

To: Administrative Law Judge
John M. Frysiak

OPPOSITION TO PETITION FOR LEAVE TO AMEND

Raymond W. Clanton, by his attorney, respectfully opposes the petition for leave to amend, filed August 30, 1993 by Loren F. Selznick in the above-captioned proceeding. In support thereof, the following is shown.

Selznick seeks leave to amend her application by drastically changing her financial proposal. In her application as originally filed, she averred it would cost \$360,070 to construct her station and operate it for three months without revenue. To meet this cost, she certified that she had reasonable assurance of the sum of \$361,000 from Joseph P. Dailey. Selznick stated that Mr. Dailey has no relationship to her. See Exhibit 1 hereto, Section III from Selznick's application.

In her proposed amendment, Selznick states that she has only now decided to modify her proposal. As a result, her

revised total cost to construct and operate her station for three months without revenue is reduced by 70% to \$109,460.

In an attempt to demonstrate the basis for her revised cost estimate, Selznick attaches an equipment budget, partially itemized, which totals \$79,460. Studio equipment, furniture, etc. are not itemized, but only a total is stated. No costs are given for preparation of the transmitter site, remodelling the studio, or for legal and engineering fees. This budget is contained in a letter dated August 2, 1993, from Miller & Associates, identified on letterhead as "Consultants to the Communications Industries." No other information about this entity is provided.

Selznick's budget is deficient in other ways as well. She is committed to move to California, across the country from her present residence in New York. She has not provided for moving expenses, nor for living expenses in California. As she will be operating the station for three months without revenue at a total monthly cost of \$10,000 per month, it is unlikely she will be drawing a salary from the station. She has failed to explain how she will cover her rent, food, clothing, transportation to and from the station, etc.

Selznick has not provided any information on the cost of operation of her station. She states that such figure came from her consultant, Mr. Miller, but no operating cost figure appears in his letter. Without detailed information on the cost of operating the station, such as salaries, utilities,

rents, taxes, etc., her estimate of \$10,000 per month is meaningless. It is clear that Selznick's new budget is woefully incomplete, for both her construction and operating cost estimates are grossly deficient. By itself this is a valid reason for rejecting her amendment.

Procedurally, Selznick's petition is unacceptable. Section 73.3522(b) of the Commission's rules states that requests to amend an application after designation for hearing must include a showing of good cause. The elements of good cause are stated in Erwin O'Connor Broadcasting Co., 22 FCC 2d 140, 143 (Rev. Bd. 1970).

Among the elements of good cause identified in O'Connor is that the amendment is not caused by the voluntary act of the applicant. Selznick fails to address this vital element in her attempt to show good cause. Clearly, her decision to restructure her station operation is completely voluntary. For this reason, good cause to amend does not lie, and her amendment must be rejected. See, e. g. Tallahassee Minority Partners (Hearing Designation Order), 5 FCC Rcd 7207 (1990). ("To accept amendments after the close of the amendment as of right period would be unfair to the other applicants in this proceeding, who fully complied with our acceptability requirements as of the amendment as of right date.")

Furthermore, Selznick has not demonstrated that she was financially qualified when she first filed her application and so certified. An applicant must demonstrate that its initial

financial certification was correct before it is permitted to amend such certification. Aspen FM, Inc., 6 FCC Rcd 1602 (1991). As noted above, Selznick stated initially that she was relying exclusively on funds to be provided by Joseph Dailey to meet her estimated costs. Selznick's application was filed under the current rules which require that all financial commitments be in written form and in the applicant's possession at time of certification.

Selznick has provided no documentation demonstrating that Dailey had given her reasonable assurance at the time her application was filed. Selznick provides only Dailey's declaration of August 27, 1993, wherein he states, in December 1991 he "gave her reasonable assurance that I would provide the funds necessary to construct the station and operate it for three months without revenue." He does not state the terms (interest rate, repayment terms, and collateral) under which he was to provide the funds. Moreover, Selznick exchanged no financial documents on August 31, 1993, the agreed-upon date for the standard document production. Absent a contemporaneous written financial commitment from Mr. Dailey expressly providing such information, there can be no reasonable assurance of financing. Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990), rev. denied, 6 FCC Rcd 1893 (1991); Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853 (1989).

Accordingly, Selznick has not demonstrated that she did in fact have reasonable assurance of financing, under Commission policy, when she filed her application. Aspen FM, supra. This constitutes yet another basis to reject her amendment.

Acceptance of Selznick's amendment would require addition of a financial qualifications issue, for her amendment does not demonstrate reasonable assurance of sufficient funds. Clanton has shown above that her estimate of \$109,460 is unsupported and inadequate. Even assuming that this amount is all that is required, she has not demonstrated its availability. According to her own liquidity analysis, Exhibit C to her amendment, she has only \$111,019 available should she liquidate her cooperative apartments. However, her liquidity analysis is flawed, as it does not take into account sales commissions and closing costs. She indicates less than \$4,000 in equity on the East 11th Street unit. Assuming a 6% sales commission on each sale, Selznick would have to pay \$12,000 in commissions alone. Her closing costs would be additional. In addition, she has not figured in any capital gains taxes which would be payable from the sale of these properties. Merely subtracting the sales commissions from her claimed liquid assets reduces the amount to less than \$100,000. It is clear therefore that Selznick does not have sufficient net liquid assets in her own name to cover even her extremely low estimate of her expenses.

Recognizing this deficiency, Selznick claims to have


assurance of a loan from Joseph P. Dailey for \$40,000. In his Declaration of August 27, 1993, Mr. Dailey describes the terms of his proposed loan to Selznick. While he states the amount of the loan, the repayment terms and interest rate, he does not identify the collateral which will be required. Except in rare cases, not relevant here, the Commission requires loan letters to specify the collateral and insists that the applicant demonstrate it is able to provide it. Scioto, supra, and Peter Joseph Devlin and Patricia Eve Devlin, FCC 90M-2690, released August 27, 1990 (ALJ Frysiak), citing with approval A. P. Walter, Jr., 6 FCC 2d 875 (Rev. Bd. 1991). Accordingly, the Commission may not now credit Selznick with any funds from Mr. Dailey. The conclusion is beyond doubt; Selznick does not currently have financing to cover even her reduced cost estimate.

In sum, Selznick's amendment lacks good cause, as it arises from the voluntary act of the applicant. There is no reason why Selznick could not have gone through her exercise before filing her application. It is also unfair to Clanton, who firmed up his budget and plans during the period permitted for amendments as of right. Selznick's amendment is incomplete, for it does not adequately explain Selznick's cost estimates and fails to demonstrate assurance of funds to meet even those estimates. Moreover, it fails to make the necessary showing that her initial financial certification was correct.

Accordingly, Selznick lacks good cause to amend her application as requested. Her Petition for Leave to Amend must be denied.

Respectfully submitted,

RAYMOND W. CLANTON

By 
Terrold Miller
His Attorney

September 3, 1993

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

EXHIBIT 1

☒ Yes ☐ No

\$ 360,070

| Source of Funds (Name and Address) | Telephone Number | Relationship | Amount |
|--|------------------|--------------|-----------|
| Joseph P. Dailey 565 Peralta Hills Drive Anaheim, CA 92807 | 714-282-1170 | none | \$361,000 |

CERTIFICATE OF SERVICE

I hereby certify that on this 3 day of September, 1993

a copy of the foregoing document was placed in the United States mail,
first class postage prepaid, addressed to the following:

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